

EXHIBIT M

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE: Case No.: 03-10945 (MFW)
FLEMING COMPANIES, INC. et al. 821 North Market Street
Debtor, Wilmington, Delaware 19801
Date: July 26, 2004
Time: 9:46 a.m.

CERTIFIED:
AS A TRUE COPY:
ATTEST:

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U.S. BANKRUPTCY COURT

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TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

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1 agreement and therefore I'm satisfied that the plan is feasible
2 not withstanding that side letter.

3 I think with respect to the allegations of lack of good
4 faith, the only objection is that of Mr. Berry and I don't find a
5 lack of good faith here. I find, as I stated earlier, that there
6 was no transfer of the software authorized, approved under the
7 asset purchase agreement. And the plan does not itself provide
8 for any transfer of the intellectual property contrary to Third
9 Circuit law.

10 That said, I think that the issue, as I said
11 previously, of any claim that Mr. Berry may have against --
12 certainly against C&S is not within my jurisdiction, but as
13 against the debtor, I am satisfied to let another court decide
14 that issue. And notwithstanding any injunction provisions of the
15 plan to permit the post-petition infringement action to proceed
16 in the court in which it was filed.

17 With respect to the pre-petition, I did review the
18 debtor's supplemental brief, but I'm still not satisfied that
19 there's any reason why I should not grant relief from the stay to
20 permit that case to conclude to the extent it's simply to enter
21 final judgment and will have liquidated the pre-petition claim to
22 the extent it sought an injunction. I'm not satisfied it's
23 contrary to -- certainly not contrary to the plan. And I don't
24 see any reason why that should not proceed. I really think it's
25 -- it may or may not be encompassed by the second complaint, but

1 I will allow the state court -- excuse me, the courts in Hawaii
2 to decide that.

3 So I will grant relief from the stay as to both the
4 pre-petition claim and reconfirm that under Title 28 Section 959
5 the post-petition action may proceed and will specifically
6 exclude that from any injunction in the plan to the extent it
7 seeks to stop any action based on pre-confirmation post-petition
8 activity. I think it should be resolved by the whatever amended
9 complaint we're up to filed by Mr. Berry.

10 MR. LIEBELER: Just to clarify the ruling, Your Honor,
11 if you're lifting the stay in the pre-petition litigation --

12 THE COURT: Yes.

13 MR. LIEBELER: -- to let it proceed from where it was
14 because there were post-trial motions in play at that time.

15 THE COURT: Yes.

16 MR. LIEBELER: I want to make sure that record's clear.

17 THE COURT: Yes. Just so it's clear, the debtor's also
18 permitted to proceed with any post-trial proceedings.

19 MR. LIEBELER: Thank you, Your Honor.

20 THE COURT: Since the stay does not affect the debtor.

21 MR. SPRAYREGEN: Your Honor, as I noted at the outset,
22 at the right time, we did have two stipulations that went with
23 proposed confirmation; one from CHEP and one from Jackson Capital
24 that I had handed up earlier. And then I do have, and I'm not
25 sure if the Court wants to go through this now or how you want to

CERTIFICATE

I certify that the foregoing is a correct transcript,
from the electronic sound recording of the proceedings in the
above-entitled matter.

Susan Holcomb August 3, 2004
Susan Holcomb, Transcriber

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